

Cosco Busan pilot charged with pair of crimes

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The veteran pilot who was navigating the container ship Cosco Busan when it crashed into the Bay Bridge in November, spilling more than 50,000 gallons of fuel oil into the bay and killing thousands of birds, was charged in federal court in San Francisco Monday with violating two environmental laws.

Prosecutors accused Capt. John J. Cota of Petaluma of violating the Clean Water Act through criminal negligence and of killing or wounding migratory birds, a violation of the Migratory Bird Treaty Act. If convicted of the charges, both of which are misdemeanors, Cota could be sentenced to a maximum of 18 months in federal prison and \$115,000 in fines.

Cota, 60, has been a pilot on San Francisco Bay for 27 years. His state license was suspended after the accident, and he turned in his federal merchant marine officer's license after the Coast Guard said there was reason to believe he was physically unable to perform his duties.

Cota was in charge of the navigation of the 901-foot-long container ship the morning of Nov. 7 when it crashed into the second tower west of Yerba Buena Island in a thick fog. Heavy fuel oil poured from a gash on the Cosco Busan's port side, killing more than 2,000 birds over the next few days, among them brown pelicans, marbled murrelets and western grebes. The brown pelican is a federally endangered species and the marbled murrelet is a federally threatened species.

The charges allege that Cota acted in a negligent manner by a whole series of actions, including sailing in the fog, failing to proceed at a safe speed, not reviewing the proposed course with the Cosco Busan's captain and officers, failing to check the navigation equipment with the ship's officers, and not using the ship's radar while making an approach to the Bay Bridge.

The federal accusations are similar to the conclusions reached by investigators from the State Board of Pilot Commissioners in December, but maritime attorneys said it was rare for criminal charges to result from such errors.

Jeff Bornstein, Cota's attorney, said Monday that the charges were both "premature" and "unusual." He said the Coast Guard recognizes that "maritime mishaps require a ... chain of errors and causes," and that other government agencies, notably the National Transportation Safety Board, had not yet identified the "errors and causes";

that led to the accident. The safety board will hold hearings on the incident next month.

"What is unusual is that a pilot is being charged at all," Bornstein said. "He was just trying to do his job."

Bornstein said Cota, who was born and raised in San Francisco, "cares deeply about San Francisco Bay and its ecosystem and is deeply distressed about what happened."

"We strongly believe that once all the evidence is heard, a jury will find in Capt. Cota's favor," he said.

Even if he is cleared of the federal criminal charges, however, Cota faces hearings that could result in the loss of his livelihood.

The state pilot commission investigation last year concluded the Cota had made a number of errors and that "pilot error" was the cause of the crash. It is awaiting a reply from Cota before deciding whether to pull his license permanently.

In addition, other investigators concluded that Cota suffered from a sleep disorder and was taking medication that might have affected his judgment.

In maritime law, the pilot, who is an officer licensed by both the state and federal government and is responsible for giving advice on the navigation of a ship, is merely "a servant of the ship" and not liable for damage resulting from his actions.

The cost of the oil spill, which affected the bay shoreline and ocean beaches as far as Bolinas in Marin County and the San Mateo County coast, is the responsibility of the ship's owner, Regal Stone Ltd. of Hong Kong.

Earlier this month, San Francisco officials said an insurance agent for the owners of the Cosco Busan would pay the city \$2 million in an initial installment for its cleanup costs. The total cost of the accident and cleanup to government agencies has been estimated at more than \$60 million.

On March 4, the California State Lands Commission voted to join federal and other state agencies in a process to determine the full extent of damage to the environment and to try to recover any costs, in court if necessary.

"With a federal criminal case under way, it is all the more imperative that California moves swiftly to recover damages to our coastline and wildlife, and to signal that protecting California's environment and people is a top priority," said Lt. Gov. John Garamendi, a member of the state commission.